

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX
Petitioner

File No. 85558-001

v

Health Alliance Plan of Michigan
Respondent

_____/

Issued and entered
This 26th day of November 2007
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 3, 2007 XXXXX, on behalf of her minor daughter XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On October 10, 2007, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The case required analysis by a medical professional. Therefore, the Commissioner assigned the matter to an independent review organization (IRO), which submitted its recommendations to the Office of Financial and Insurance Services on October 24, 2007.

II
FACTUAL BACKGROUND

The Petitioner is 14 years old and a Health Alliance Plan of Michigan (HAP) member.

She requested authorization and coverage for bariatric surgery from HAP. HAP denied the request but offered to approve coverage for her to participate in a medically supervised weight loss program with XXXXX Healthy Kids Program.

The Petitioner appealed HAP's denial of surgery but HAP maintained its denial stating, "bariatric surgery is only covered for members who are over the age of eighteen (18) years old and have completed a one (1) year medically supervised weight loss program from an affiliated provider."

The Petitioner exhausted HAP's internal grievance process and received its final adverse determination letter dated September 4, 2007.

III ISSUE

Did HAP properly deny the Petitioner's request for authorization and coverage for bariatric surgery?

IV ANALYSIS

Petitioner's Argument

Petitioner's mother says that Petitioner has been diagnosed with pseudotumor cerebri which she says is "a life altering and potentially life threatening condition that is impacted by obesity." Petitioner's mother says that her daughter's physician, Dr. XXXXX, agrees that losing significant weight on your own does have good long term success. Dr. XXXXX provided Petitioner's mother with this assessment of bariatric surgery:

Bariatric surgery has shown the highest success rates for obesity management and diabetes recovery to date, with an average weight loss of 35-38% of initial total body weight and a 72-83% received from diabetes at 1-year post roux-en-Y gastric bypass. However, weight regain does occur and the data at 10-years post roux-en-y gastric bypass show a mean weight loss of 25-28 % and 36% recovery from diabetes. Overall, outcomes with dietary obesity interventions show a smaller percent weight loss and are often associated with high attrition and low long-term maintenance.

Petitioner's mother says that Petitioner is already 100 pounds overweight with a BMI of 39.4. She has tried numerous weight loss programs, diets, and counseling but has failed to sustain any significant weight loss. She contends that weight loss by gastric bypass is medically necessary to keep the pseudotumor cerebri in remission. Petitioner's mother believes that there should be an exception to the criteria made for her daughter. She argues that surgery should be approved since the Petitioner will not be able to sustain her weight loss by any other means.

Respondent's Argument

HAP says it evaluates candidates using criteria in its medical policy "Bariatric Surgery/Gastric Bypass," which states in pertinent part:

COVERAGE CRITERIA

1. Bariatric Surgery will be covered for Members meeting all of the following criteria:
 - a. Member must have a HAP HMO, HAP POS, Senior Plus, AHL Medicare Complementary or Alliance Medicare PPO Contract.
 - b. Member must be at least 18 years of age.
 - c. Member's medical record must show documentation of one of the following:
 - i. BMI > 35 and two life threatening comorbidities.
 - A. Co-morbidities include but not limited to:
 - I. Poorly control diabetes mellitus
 - II. Symptomatic sleep apnea not controlled by C-Pap
 - III. Severe cardio-pulmonary condition
 - IV. Hypertension inadequately controlled with optimal conventional treatment
 - V. Uncontrolled Hyperlipidemia not amenable to optimal conventional treatment
 - ii. BMI > 40 with or without co-morbid conditions.
 - d. A psychiatric evaluation must be performed in order to establish the Member's emotional stability and ability to comply with post-surgical limitations.
 - e. Documented compliance with weight loss program including diet, exercise, and behavioral modification for a minimum of one year.

- i. The weight loss program must be medically supervised and provided by a plan provider. Members will be covered for all medical services excluding fees associated with exercise programs and food supplements. All medical services related to the program including laboratory, EKGs, physician office visits, psychological testing will be covered with applicable co-payments. The facility must utilize a multidisciplinary approach, including but not limited to: involvement of a physician with a special interest in obesity, a dietitian, a social worker (MSW), psychologist or psychiatrist interested in behavioral modification and eating disorders.

HAP says that the requested surgery is not a covered benefit for Petitioner because, under the certificate of coverage, the procedure is only available for individuals over the age of 18 who have completed a one-year medically supervised weight loss program from a HAP-affiliated provider.

Commissioner's Review

Petitioner has been diagnosed with pseudotumor cerebri, a disorder commonly associated with obesity in young females consisting of cerebral edema with increased intracranial pressure and papilledema. Petitioner is being treated with medication and the disorder is presently in remission. Petitioner's mother believes that bariatric surgery will help alleviate this medical condition as well as the other numerous negative health consequences of obesity.

Petitioner's height and weight classify her as morbidly obese. But for her age, she would qualify for bariatric surgery under HAP's medical policy, assuming she completes a one year, supervised weight loss program and psychological evaluation. HAP denied coverage because the Petitioner failed to meet the criteria of its medical policy. Petitioner's medical records were submitted to an independent medical review organization to evaluate the medical issues raised by Petitioner's appeal. The reviews were conducted by two physicians, an internist and a surgeon, who both recommended that the denial of authorization be upheld.

The first reviewer is an internist certified by the American Board of Internal Medicine. The reviewer is an academic and clinical instructor at a university-based hospital. This reviewer noted HAP's medical policy which defines the criteria which must be met in order for surgery to be approved. The reviewer stated that bariatric surgery is not appropriate because Petitioner is not 18 years old, does not have documented proof of failure of a weight loss program for one year and does not have two co-morbidities (the IRO does not consider pseudotumor cerebri to be a co-morbidity). The reviewer agreed that HAP's criteria were appropriate.

The second IRO reviewer is certified by the American Board of Surgery, a Diplomate of the National Board of Medical Examiners and a Fellow of the American College of Surgeons. This physician also is a Member of the Society of American Gastrointestinal Endoscopic Surgeons, Member of the American Society for Bariatric Surgery and member of the International Federation of Surgery for Obesity and is published in peer reviewed medical literature. This reviewer recommended upholding HAP's denial of lap-band surgery and observed:

There is no question that this patient requires serious intervention to obtain and sustain weight loss to reduce complications, morbidity, and mortality associated with morbid obesity. At her young age, she is not only obese but suffers from pseudotumor cerebri and asthma. It is very likely that she will have co-morbidities added to her list if she is unable to lose weight. The pseudotumor cerebri is in remission, the patient is asymptomatic and off medical therapy. This is not a diagnosis that requires emergency surgery. In fact, it would make surgery contraindicated.

The IRO determined there was insufficient data in the adolescent population to recommend surgical weight loss; and that the Lap-Band Systems manufacturing company notes that the procedure is contraindicated in non-adult patients.

The IRO reviewers' recommendations, based on extensive expertise and professional judgment, are afforded deference by the Commissioner. The Commissioner can discern no

reason why their judgment should be rejected in the present case. Therefore, the Commissioner accepts their conclusions and upholds HAP's denial of coverage.

**V
ORDER**

The Commissioner upholds HAP's September 4, 2007, final adverse determination in the Petitioner's case. HAP properly denied the Petitioner coverage for bariatric surgery.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.